Supreme Court of the United States.

No. 25.—October Term, 1906.

The Fidelity Mutual Life Insurance Company, Appellant, *vs.* William H. Clark, Morris A. Spoonts, Charles A. Culberson, and Phillips Investment Company.	Appeal from the Circuit Court of the United States for the Northern District of Texas.

[October 29, 1906.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a bill in equity, brought in the Circuit Court to enjoin the setting up of a judgment at law recovered in the same Circuit Court upon three policies of life insurance, on the ground that the judgment was obtained by fraud. It also seeks to compel the plaintiff in the action at law, and other parties to whom interests in the policies were assigned, to repay the sums which they received upon them. The judgment was rendered in a case which came before this Court, and the dramatic circumstances of the alleged death are set forth in the report. *Fidelity Mutual Life Association* v. *Mettler*, 185 U. S. 308. The appellant is the plaintiff in error in that case, having changed its name. After the date of the judgment the appellant discovered that Hunter, the party whose life was insured, was alive, and that the recovery was the result of a deliberate plot. Thereupon it forthwith brought this bill. One of the defences set up and argued below and here was that by the Seventh Amendment to the Constitution no fact tried by a jury shall be otherwise reexamined in any Court of the United States than according to the rules of the common law. On the facts alleged and proved the Circuit Court entered a decree against the plaintiff at law, Mettler, now Smythe, but dismissed the bill as against the assignees of partial interests in the policies. The Insurance Company appealed to this Court.

The material facts are these. By way of a contingent fee for the services in collecting the insurance, Mrs. Mettler assigned to the present defendant Clark and his partners one-third interest in the policies, with an additional sum in case statutory damages and attorney's fees were recovered. This afterwards came to Clark alone. Clark and Mrs. Mettler assigned five hundred dollars each, from their respective interests, to the defendant Culberson, as a contingent fee for argument and services in this Court. Clark also employed the defendant Spoonts, it would seem, on a contingent fee.

Finally he mortgaged his right to the Phillips Investment Company. When the judgment was recovered, before execution, the Insurance Company paid the amount ($24,028.25) into Court. Out of this the clerk paid to Mrs. Mettler $11,616; to Clark, $8,346; to Spoonts on Clark's order, $1,500; to Culberson, $1,026, and to the Phillips Investment Company, $1,540.24. It is these sums, other than that paid to Mrs. Mettler, that are in question here.

It will not be necessary to consider the constitutional question under the Seventh Amendment, to which we have referred, or some other questions which were raised, because we are of opinion that the appellees are entitled to keep their money, even if the judgment can be impeached for fraud. They all got the legal title to the money which was paid to them, or, what is the same thing, got the legal title transferred to their order. That being so, the appellant must show some equity before their legal title can be disturbed. It founds its claim to such an equity on the mode in which the judgment which induced it to part with the title to its money was obtained. But fraud, of course, gives rise only to a personal claim. It goes to the motives, not to the formal constituents of a legal transfer, *Rodliff* v. *Dallinger*, 141 Mass. 1, 6, and the rule is familiar that it can affect a title only when the owner takes with notice or without having given value. *Fletcher* v. *Peck*, 6 Cranch, 87, 133. 2 Williams, Vendor & Purchaser, 674. See *The Eliza Lines*, 199 U. S. 119, 131. The question is whether the appellant can make out such a case as that.

It is said that the title of the appellees stands on the judgment, and that if the judgment fails the title fails. But that mode of statement is not sufficiently precise. The judgment hardly can be said to be part of the appellees' title. It simply afforded the appellant a motive for its payment into Court. The appellees derive their title immediately from Mrs. Mettler, and remotely from the act of the appellant. They stand exactly as if the appellant had handed over the twenty-four thousand dollars in gold to her and she thereupon had handed their proportion to them. We are putting no emphasis on the fact that the thing transferred was money. The appellees knew from what fund they were paid, from what source it came, and why it was paid to Mrs. Mettler. We are insisting only that the title had passed to them. But we repeat that, as the title had passed, the appellant must find some equity before it can disturb it, and we now add that, as there is no question that the appellees took for value, that is in payment for their services, or, if it be preferred, in performance of Mrs. Mettler's contingent promise, the equity must be founded upon notice.

The notice to be shown is notice of the fact that the judgment which induced the appellant's payment was obtained by fraud. But notice cannot be established by the mere fact that while the appellees held an interest in the policies only they were assignees of choses in action, and took them

subject to the equities. That is due to a chose in action not being negotiable. It does not stand on notice. The general proposition was decided in *United States* v. *Detroit Lumber Co.*, 200 U. S. 321, 333, 334, and *United States* v. *Clark*, 200 U. S. 601, 607, 608, and earlier in *Judson* v. *Corcoran*, 17 How. 612, 615, and, we have no doubt, is the law of England. Of course the assignee of an ordinary contract can only stand in the shoes of the party with whom the contract was made. In the discussions of the rule which we have seen we have found no other reason offered, as no other is necessary. But the assumption of the good faith of the assignee occurs in more cases than one.

The principle which we apply is further illustrated by the priority given to the later of two equitable titles, if the legal title be added to it, 2 Pomeroy, Eq. 3d ed. §§ 727, 768 by the doctrine of tacking, and, in some degree, by the great distinction recognized in other respects between the holder of title under an executed contract and a party to a contract merely executory. See 1 Williams V. & P. 540, and cases cited. We may add further that, even if we were wrong, the equities to which an assignee takes subject are equities existing at the time of the assignment, 1 Williams V. & P. 584, and that the notice with which he is supposed to be charged as assignee can be of nothing more. Therefore merely as assignees the appellees had not notice of the as yet unaccomplished fraud in obtaining the judgment. The policies were honest contracts and it was an interest in the policies which was assigned, at least to Clark.

The appellant is driven, therefore, to contend, as it did contend at the argument, that notice of the denial that Hunter was dead, in the suit on the policy, was notice of the fraud. But it is admitted that the appellees all acted in good faith; that they believed the plaintiff's case. In such circumstances, even if the answer had gone further, and had charged the plaintiff with all that the present bill charges against her, when a jury had decided that the charges were groundless, a judgment had been entered on the verdict, and the Insurance Company had accepted the result by paying the money into Court without waiting for an execution, it would be impossible to say that the supposed notice was not purged. The appellees were not bound to contemplate future discoveries of what they honestly believed untrue, and a bill to impeach the final act of the law. See *Bank of the United States* v. *Bank of Washington*, 6 Peters, 8, 19.

Decree affirmed.

Mr. Justice HARLAN and Mr. Justice WHITE dissent.

Mr. Justice MCKENNA took no part in the decision of this case.

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Test:

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